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PEARNE & GORDON LLP
526 Superior Avenue East
Cleveland, Ohio 44114-1485

In re Application of	:	
Hirofumi Yura Et al	:	DECISION ON
Application No.: 09/937,991	:	
PCT No.: PCT/JP00/02012	:	REQUEST
Int. Filing Date: 30 March 2000	:	
Priority Date: 02 April 1999	:	FOR WITHDRAWAL
Attorney's Docket No.: 33944	:	
For: Functionalized Glycosaminoglycan...	:	OF ABANDONMENT
By Using The Same	:	

This Decision is in response to applicants "Petition to Withdraw Notification of Abandonment" filed on 07 August 2002, which argues that the above-identified application was improperly held abandoned.

BACKGROUND

On 28 September 2001, applicant filed a Transmittal letter (Form PTO-1390) for entry into the national stage in the United States, which was accompanied by, a copy of the international application. No executed oath or declaration was filed at such time.

On 31 October 2001, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the oath or declaration complying with 37 CFR 1.497(a) and (b), identifying the application by international application number and international filing date must be furnished within the time period set forth. The notification set two months time limit or 32 months from the priority date for the application, whichever is later to respond.

On 02 July 2002, the DO/EO/US mailed a "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) which indicated that applicant had failed to respond to the "NOTIFICATION OF MISSING REQUIREMENTS (PCT/DO/EO/905), mailed 10/31/2001 within the time period set therein; accordingly the application was abandoned.

In response to the "NOTIFICATION OF ABANDONMENT" mailed on 02 July 2002, petitioner has submitted the instant petition requesting withdrawal of the Notice of Abandonment. In support of the request, petitioner has provided a copy of the returned/stamped receipt card acknowledging a receipt date of 23 January 2002.

DISCUSSION

The present petition was accompanied by a copy of the original postcard which was sent to the United States Designated/Elected Office (DO/EO/US). The postcard lists the item submitted on 23 January 2002 and it indicates, *inter alia*, declaration and power of attorney was received on such date. Applicant's representative states that the papers accompanying the present petition are copies of the papers that were received at the Patent Office on 23 January 2002.

MPEP 503 provides:

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.

Applicant's postcard receipt serves as *prima facie* evidence of receipt of the listed item on 23 January 2002 by the USPTO.

Since the itemized postcard does not list the "letter" in its contents of items received on 23 January 2002, the "letter" can not be considered as being simultaneously filed with the declaration. Accordingly, the certificate of mailing under 37 CFR 1.8 is invalid for the declaration and can not be used as a basis for a timely filing date of 19 December 2001 for the declaration.

This response, however, with a month extension for response (since the 2 month response was due on 31 December 2001) was within the time period stipulated and applicant's representative Docket Account is being charged \$110.00 (37 CFR 1.17(a)) as indicated in the "Letter" in response to the Notice to File Missing parts of Application.

In view of the above, applicant's representative response- the Declaration filed on 23 January 2002- is considered timely. Accordingly, the instant application has been improperly abandoned.

CONCLUSION

Applicants' request to withdraw the "NOTIFICATION OF ABANDONMENT" is GRANTED.

The NOTIFICATION OF ABANDONMENT, mailed 02 July 2002 has been **VACATED**.

The application is being returned to the United States Designated/Elected Office (DO/EO/US) for processing in accordance with this decision, that is, for issuance of a Notification of Acceptance of Application (Form PCT/DO/EO/903) identifying a 35 U.S.C. § 371 date of **23 January 2002**.



Rafael Bacares
PCT Legal Examiner
Work (703) 308-2260
Fax (703) 308-6459



Richard Cole
PCT Legal Examiner
PCT Legal Affairs